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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,990	09/05/2003	Christiaan P.A. van de Ligt	023829-0257	9712
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			EXAMINER	
			VON BUHR, MARIA N	
			ART UNIT	PAPER NUMBER
			2125	
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			01/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/656,990

Applicant(s)

VAN DE LIGT ET AL.

Examiner

M.N. Von Buhr

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 Sep 2003, 03 Mar 2004 and 24 Aug 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20040303 & 20040824</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application is a continuation of U.S. Patent Application Serial No. 10/175,512 and is, therefore, accorded the benefit of the earlier filing date of 19 June 2002. Any previously presented rejections or objections which are not expressly repeated in this Office action are hereby withdrawn.
2. Examiner acknowledges receipt of Applicant's preliminary amendment, received 03 March 2004; which cancels claim 1 and introduces claims 2-24. Claims 2-24 are now pending in this application.
3. Examiner acknowledges receipt of Applicant's information disclosure statements, received 03 March 2004 and 24 August 2004, with accompanying reference copies. These submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, they have been taken into consideration for this Office action.
4. Examiner acknowledges receipt of Applicant's formal drawings. These drawings are acceptable.
5. Applicant is advised that should claims 7-13 be found allowable, claims 14-20 will be objected to under 37 CFR 1.75, as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP §706.03(k). In this case, the preamble of claim 14 carries no patentably distinguishing weight, with regard to claim 7 of this application, since it is merely a "for use" which has no clear nexus with the body of the claim.
6. The non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute), so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A non-statutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the

conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 2, 5, 6, 7, 9, 10, 12, 13, 14, 16, 17, 19 and 20-24 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 4, 11, 13, 15, 16, 18, 19 and 23 of U.S. Patent No. 6,658,308. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are claiming the corresponding method for the system claims of the patent.

8. The following is a quotation of the second paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which Applicant regards as his invention.

9. Claims 3-5, 8-12, 15-19 and 22-24 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claims 3, 8 and 15, there is no clear and proper functional antecedence for "a level of nucleic acid material" having been "determined to optimize a criteria." Also, the term "optimize" is deemed to be a term of degree, which has not been clearly and properly defined within the claim language.

In claims 4, 11 and 18, there is no clear and proper functional antecedence for "one additional nutrient component," since a first such component has not been previously presented in the claims.

In claims 5, 12 and 19, there is no clearly presented nexus between the introduced step and the remainder of the body of the claimed method.

In claims 10 and 17, there is no clear and proper functional antecedence for "the effect of the optimization weighting data," such that the formulation data can be representative, thereof.

The remainder of the claims are rejected as necessarily incorporating the above-noted ambiguities of their parent claims.

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. Applicant is advised to carefully review the cited art, as evidence of the state of the art, in preparation for responding to this Office action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M.N. Von Buhr whose telephone number is 571-272-3755. The examiner can normally be reached on M-F (9am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



M.N. Von Buhr
Primary Patent Examiner
Art Unit 2125

MNVB
1/6/08